

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2577

AN ACT

AMENDING SECTION 13-2002, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2.1; AMENDING SECTION 41-763, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7.2; AMENDING SECTION 41-1376, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 8, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1384; AMENDING SECTION 43-1021, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 316, SECTION 3, AND CHAPTER 317, SECTION 11; REPEALING SECTION 43-1021, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 292, SECTION 2; MAKING AN APPROPRIATION; RELATING TO UNLAWFUL EMPLOYMENT PRACTICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-2002, Arizona Revised Statutes, is amended to
3 read:

4 13-2002. Forgery; classification

5 A. A person commits forgery if, with intent to defraud, the person:

6 1. Falsely makes, completes or alters a written instrument; or

7 2. Knowingly possesses a forged instrument; or

8 3. Offers or presents, whether accepted or not, a forged instrument or
9 one that contains false information; OR ~~—~~

10 4. FALSELY MAKES OR ALTERS A WRITTEN INSTRUMENT THAT PURPORTS TO BE A
11 DOCUMENT THAT FULFILLS THE REQUIREMENTS FOR ESTABLISHING IDENTITY OR
12 ELIGIBILITY TO WORK IN THE UNITED STATES PURSUANT TO THE FEDERAL IMMIGRATION
13 REFORM AND CONTROL ACT OF 1986 AND THAT IS USED TO OBTAIN EMPLOYMENT IN THIS
14 STATE BY A PERSON WHO IS NOT AUTHORIZED TO WORK IN THE UNITED STATES.

15 B. The possession of five or more forged instruments may give rise to
16 an inference that the instruments are possessed with an intent to defraud.

17 C. IF THE COURT ORDERS RESTITUTION FOR A VIOLATION OF SUBSECTION A,
18 PARAGRAPH 4, THE RESTITUTION ORDER SHALL INCLUDE DAMAGES INCURRED BY ANY
19 EMPLOYER WHO RELIED ON A FORGED INSTRUMENT IN HIRING OR EMPLOYING A PERSON
20 WHO WAS NOT AUTHORIZED TO WORK IN THE UNITED STATES, INCLUDING THE EMPLOYER'S
21 COSTS, ATTORNEY FEES AND EXPENSES.

22 ~~C.~~ D. FORGERY PURSUANT TO SUBSECTION A, PARAGRAPH 4 IS A CLASS 3
23 FELONY. Forgery PURSUANT TO SUBSECTION A, PARAGRAPH 1, 2 OR 3 is a class 4
24 felony.

25 Sec. 2. Title 23, chapter 2, Arizona Revised Statutes, is amended by
26 adding article 2, to read:

27 ARTICLE 2. EMPLOYMENT OF UNAUTHORIZED WORKERS

28 23-211. Definitions

29 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

30 1. "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS
31 STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

32 2. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT
33 PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND
34 SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

35 3. "EMPLOYER" MEANS ANY PERSON WHO OWNS A PERCENTAGE OF THE BUSINESS
36 ENTITY. EMPLOYER DOES NOT INCLUDE SHAREHOLDERS OF COMPANIES WHO HAVE A CLASS
37 OF COMMON EQUITY STOCK LISTED OR AUTHORIZED TO BE LISTED ON THE NEW YORK
38 STOCK EXCHANGE OR THE AMERICAN STOCK EXCHANGE OR LISTED ON THE NASDAQ STOCK
39 MARKET.

40 4. "LICENSE" INCLUDES THE WHOLE OR A PART OF ANY AGENCY OR POLITICAL
41 SUBDIVISION PERMIT, CERTIFICATE, APPROVAL, REGISTRATION, CHARTER OR SIMILAR
42 FORM OF PERMISSION REQUIRED BY LAW.

43 5. "SANCTION" INCLUDES A FINE, A CIVIL PENALTY OR IMPRISONMENT.

44 6. "UNAUTHORIZED WORKER" MEANS A PERSON WHO IS ALL OF THE FOLLOWING:

1 (a) A PERSON WHO IS NOT A CITIZEN OR NATIONAL OF THE UNITED STATES.

2 (b) AN ALIEN WHO IS NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.

3 (c) AN ALIEN WHO IS NOT AUTHORIZED TO BE EMPLOYED UNDER FEDERAL LAW.

4 23-212. Verification of employees; civil and criminal immunity

5 NOTWITHSTANDING ANY OTHER STATUTE, AN EMPLOYER WHO DOES EITHER OF THE
6 FOLLOWING IS NOT SUBJECT TO ANY CIVIL SANCTION OR CRIMINAL PENALTY IMPOSED BY
7 THIS STATE FOR EMPLOYING AN UNAUTHORIZED WORKER:

8 1. VERIFIES THE IMMIGRATION STATUS OF THE EMPLOYER'S EMPLOYEES THROUGH
9 THE BASIC PILOT PROGRAM.

10 2. COMPLIES WITH ALL FEDERAL AND STATE LAWS REGARDING LAWFUL
11 EMPLOYMENT.

12 23-213. Employees; social security numbers

13 A. AN EMPLOYER SHALL DISCHARGE AN EMPLOYEE IF THE EMPLOYER DISCOVERS
14 THAT THE EMPLOYEE PROVIDED AN INVALID SOCIAL SECURITY NUMBER TO THE EMPLOYER,
15 UNLESS THE EMPLOYEE PROVIDES AN ACCURATE SOCIAL SECURITY NUMBER OR A LEGAL
16 AND VALID FEDERAL OR STATE IDENTIFICATION DOCUMENT TO THE EMPLOYER WITHIN TEN
17 BUSINESS DAYS AFTER RECEIVING NOTICE FROM THE EMPLOYER THAT THE INITIAL
18 NUMBER WAS INVALID.

19 B. THIS SECTION DOES NOT APPLY IF AN ERROR OCCURRED WHEN A VALID
20 SOCIAL SECURITY NUMBER WAS PROCESSED BY THE EMPLOYER.

21 23-214. Employment of unauthorized workers; cease and desist
22 notice; civil penalty

23 A. BEGINNING JANUARY 1, 2007, IF AN INVESTIGATION THAT IS INITIATED BY
24 AN AGENCY OR BY A WRITTEN COMPLAINT SUBMITTED BY A PRIVATE PARTY TO AN AGENCY
25 DETERMINES THAT A PERSON WHO OPERATES A BUSINESS OR ENTERPRISE IN THIS STATE
26 EMPLOYS AN UNAUTHORIZED WORKER, AS VERIFIED BY THE AGENCY WITH THE FEDERAL
27 GOVERNMENT, THE AGENCY SHALL NOTIFY THE ATTORNEY GENERAL AND THE ATTORNEY
28 GENERAL SHALL IMMEDIATELY:

29 1. ORDER THE PERSON TO CEASE AND DESIST FROM EMPLOYING THE
30 UNAUTHORIZED WORKER AND TO DISCHARGE FOR CAUSE OTHER UNAUTHORIZED WORKERS
31 THAT ARE EMPLOYED BY THE PERSON IN THIS STATE. THE ATTORNEY GENERAL SHALL
32 CONFIRM THAT THE EMPLOYER RECEIVED THE CEASE AND DESIST ORDER THROUGH AN
33 APPROPRIATE METHOD, INCLUDING BY TELEPHONE, MAIL OR CERTIFIED MAIL. THE
34 PERSON SHALL COMPLY WITH THE CEASE AND DESIST ORDER WITHIN TEN BUSINESS DAYS
35 AFTER THE ATTORNEY GENERAL CONFIRMS THAT THE PERSON RECEIVED THE ORDER,
36 UNLESS THE PERSON HAS GOOD CAUSE TO BELIEVE THAT THE DETERMINATION WAS AN
37 ERROR.

38 2. NOTIFY THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OF THE
39 UNAUTHORIZED WORKER.

40 B. FOR THE PURPOSES OF SUBSECTION A, PROOF OF THE FOLLOWING
41 CIRCUMSTANCES, UNLESS SATISFACTORILY EXPLAINED, MAY GIVE RISE TO THE
42 INFERENCE THAT AN EMPLOYER KNOWINGLY EMPLOYED AN UNAUTHORIZED WORKER:

43 1. THE EMPLOYER PAYS THE EMPLOYEE WITH CASH INSTEAD OF BY CHECK OR
44 AUTOMATIC DEPOSIT.

1 2. THE EMPLOYER USES THE SERVICES OF A PERSON WHO IS REASONABLY KNOWN
2 TO BE VIOLATING TITLE 13, CHAPTER 23 OR TO BE ACTING IN CONCERT WITH OTHERS
3 WHO ARE VIOLATING TITLE 13, CHAPTER 23.

4 3. THE EMPLOYER VIOLATES THE MINIMUM WAGE REQUIREMENTS PRESCRIBED BY
5 THE FEDERAL FAIR LABOR STANDARDS ACT.

6 4. THE EMPLOYER ACCEPTS A CONSULAR IDENTIFICATION CARD THAT IS ISSUED
7 BY A FOREIGN GOVERNMENT AS A FORM OF IDENTIFICATION WHEN DETERMINING THE
8 EMPLOYEE'S IDENTITY.

9 C. THE ATTORNEY GENERAL MAY ASSESS A CIVIL PENALTY OF FIVE THOUSAND
10 DOLLARS AGAINST ANY PERSON WHO FAILS TO COMPLY WITH A CEASE AND DESIST ORDER
11 WITHIN THE TEN BUSINESS DAYS PURSUANT TO SUBSECTION A, PARAGRAPH 1.

12 23-215. Employment of unauthorized workers; failure to comply
13 with cease and desist order; civil cause of action

14 IF A PERSON FAILS TO COMPLY WITH THE CEASE AND DESIST ORDER UNDER
15 SECTION 23-214, THE AGENCY OR THE ATTORNEY GENERAL MAY BRING A CIVIL CAUSE OF
16 ACTION TO HAVE THE PERSON'S LICENSE SUSPENDED OR REVOKED. THE COURT SHALL
17 SUSPEND OR REVOKE THE PERSON'S LICENSE BASED ON THE SEVERITY OF THE OFFENSE.

18 Sec. 3. Title 23, chapter 2, Arizona Revised Statutes, is amended by
19 adding article 2.1, to read:

20 ARTICLE 2.1. UNLAWFUL EMPLOYMENT PRACTICES

21 23-221. Unlawful employment practices; civil penalty;
22 classification; unlawful employment revolving funds;
23 definitions

24 A. ALL EMPLOYERS IN THIS STATE SHALL MAKE PAYMENTS OF CONTRIBUTIONS
25 FOR EMPLOYMENT SECURITY PURPOSES PURSUANT TO SECTION 23-726, SECURE WORKERS'
26 COMPENSATION TO THEIR EMPLOYEES PURSUANT TO SECTION 23-961 AND WITHHOLD FROM
27 EMPLOYEES THE AMOUNTS REQUIRED PURSUANT TO SECTION 43-401. THIS SUBSECTION
28 APPLIES TO ALL EMPLOYERS WHETHER THE EMPLOYER PAYS THE EMPLOYEES BY CASH,
29 CHECK OR AUTOMATIC DEPOSIT.

30 B. ALL EMPLOYERS IN THIS STATE SHALL COMPLETE AND RETAIN I-9
31 EMPLOYMENT ELIGIBILITY VERIFICATION FORMS FOR ALL EMPLOYEES AS PRESCRIBED BY
32 FEDERAL LAW. IF THE ATTORNEY GENERAL DETERMINES THAT AN EMPLOYER HAS FAILED
33 TO COMPLETE AND RETAIN I-9 EMPLOYMENT ELIGIBILITY VERIFICATION FORMS AS
34 PRESCRIBED BY FEDERAL LAW, THE ATTORNEY GENERAL SHALL NOTIFY THE UNITED
35 STATES CITIZENSHIP AND IMMIGRATION SERVICES.

36 C. AN ENFORCEMENT AGENCY SHALL COORDINATE WITH THE DEPARTMENT OF
37 ECONOMIC SECURITY, THE INDUSTRIAL COMMISSION AND THE DEPARTMENT OF REVENUE TO
38 INVESTIGATE EMPLOYERS IN THIS STATE THAT FAIL TO COMPLY WITH SUBSECTION A OF
39 THIS SECTION.

40 D. IF AN ENFORCEMENT AGENCY DETERMINES SUFFICIENT EVIDENCE EXISTS THAT
41 AN EMPLOYER HAS KNOWINGLY FAILED TO COMPLY WITH SUBSECTION A OF THIS SECTION,
42 THE FOLLOWING APPLY FOR A FIRST VIOLATION OF SUBSECTION A OF THIS SECTION
43 DURING A ONE YEAR PERIOD:

44 1. THE ENFORCEMENT AGENCY SHALL MAIL A WRITTEN NOTICE TO THE EMPLOYER
45 BY CERTIFIED MAIL DESCRIBING THE VIOLATION.

1 2. WITHIN THIRTY DAYS AFTER RECEIVING THE NOTICE UNDER PARAGRAPH 1 OF
2 THIS SUBSECTION, THE EMPLOYER MAY CONTEST THE ENFORCEMENT AGENCY'S
3 DETERMINATION BY NOTIFYING THE ENFORCEMENT AGENCY. AFTER THE EMPLOYER
4 NOTIFIES THE ENFORCEMENT AGENCY THAT THE EMPLOYER IS CONTESTING THE
5 ENFORCEMENT AGENCY'S DETERMINATION, THE EMPLOYER SHALL PROVIDE SUPPORTING
6 EVIDENCE TO THE ENFORCEMENT AGENCY THAT THE EMPLOYER DID NOT VIOLATE
7 SUBSECTION A OF THIS SECTION. THE ENFORCEMENT AGENCY SHALL ALLOW A
8 REASONABLE AMOUNT OF TIME UNDER THIS SUBSECTION FOR THE EMPLOYER TO OBTAIN
9 COPIES OF SUPPORTING INFORMATION AND DOCUMENTS FROM FEDERAL AND STATE
10 AGENCIES.

11 3. AFTER RECEIVING SUPPORTING EVIDENCE UNDER PARAGRAPH 2 OF THIS
12 SUBSECTION, THE ENFORCEMENT AGENCY SHALL EVALUATE THE EVIDENCE AND SHALL
13 ISSUE A FINAL DETERMINATION THAT EITHER AFFIRMS THE ORIGINAL DETERMINATION OR
14 DISMISSES THE ORIGINAL DETERMINATION. THE ENFORCEMENT AGENCY SHALL MAIL THE
15 FINAL DETERMINATION BY CERTIFIED MAIL TO THE EMPLOYER.

16 4. IF AN EMPLOYER DOES NOT CONTEST THE ENFORCEMENT AGENCY'S
17 DETERMINATION UNDER PARAGRAPH 2 OF THIS SUBSECTION OR THE EMPLOYER RECEIVES A
18 FINAL DETERMINATION UNDER PARAGRAPH 3 OF THIS SUBSECTION THAT AFFIRMS THE
19 VIOLATION, THE EMPLOYER IS SUBJECT TO A CIVIL PENALTY. THE CIVIL PENALTY IS
20 TWO THOUSAND DOLLARS FOR EACH EMPLOYEE FOR WHICH THE EMPLOYER KNOWINGLY
21 FAILED TO COMPLY WITH THIS SECTION, BUT NOT TO EXCEED TEN THOUSAND DOLLARS.
22 THE ENFORCEMENT AGENCY SHALL TRANSMIT FIFTY PER CENT OF THE MONIES COLLECTED
23 PURSUANT TO THIS PARAGRAPH TO THE STATE TREASURER AND THE STATE TREASURER
24 SHALL DEPOSIT THE MONIES IN THE STATE GENERAL FUND. THE ENFORCEMENT AGENCY
25 SHALL TRANSMIT THE REMAINING FIFTY PER CENT OF THE MONIES COLLECTED PURSUANT
26 TO THIS PARAGRAPH TO EITHER:

27 (a) IF THE ATTORNEY GENERAL WAS THE FIRST ENFORCEMENT AGENCY THAT
28 INITIATED THE FIRST INVESTIGATION THAT BROUGHT FORTH THE ACTION UNDER THIS
29 SUBSECTION, THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

30 (b) IF THE COUNTY ATTORNEY WAS THE FIRST ENFORCEMENT AGENCY THAT
31 INITIATED THE FIRST INVESTIGATION THAT BROUGHT FORTH THE ACTION UNDER THIS
32 SUBSECTION, THE COUNTY TREASURER FOR DEPOSIT IN THE COUNTY GENERAL FUND.

33 (c) IF THE CITY OR TOWN ATTORNEY WAS THE FIRST ENFORCEMENT AGENCY THAT
34 INITIATED THE FIRST INVESTIGATION THAT BROUGHT FORTH THE ACTION UNDER THIS
35 SUBSECTION, THE CITY OR TOWN TREASURER FOR DEPOSIT IN THE CITY OR TOWN
36 GENERAL FUND.

37 5. AN EMPLOYER WHO IS SUBJECT TO A CIVIL PENALTY UNDER PARAGRAPH 4 OF
38 THIS SUBSECTION IS SUBJECT TO AN ADDITIONAL PENALTY. THE AMOUNT OF THE
39 ADDITIONAL PENALTY IS EQUAL TO THE AMOUNT OF REVENUE, INCLUDING INTEREST,
40 THAT WAS LOST TO THIS STATE BECAUSE OF THE VIOLATION OF THIS SECTION. THE
41 ENFORCEMENT AGENCY SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS
42 PARAGRAPH TO THE STATE TREASURER AND THE STATE TREASURER SHALL DEPOSIT THE
43 MONIES IN THE STATE GENERAL FUND.

1 E. THE FOLLOWING APPLY FOR A SECOND VIOLATION BY AN EMPLOYER WHO
2 KNOWINGLY FAILS TO COMPLY WITH SUBSECTION A OF THIS SECTION DURING A ONE YEAR
3 PERIOD:

4 1. A SECOND VIOLATION IS A CLASS 1 MISDEMEANOR. THE EMPLOYER IS NOT
5 SUBJECT TO PROSECUTION FOR A SECOND VIOLATION UNLESS THE PROCESS DESCRIBED
6 UNDER SUBSECTION D OF THIS SECTION IS TOTALLY COMPLETED.

7 2. ON CONVICTION, THE COURT MAY ORDER THAT THE EMPLOYER'S LICENSE BE
8 SUSPENDED. IF THE COURT SUSPENDS A LICENSE PURSUANT TO THIS SUBSECTION, THE
9 COURT SHALL NOTIFY THE APPROPRIATE AGENCY AND THE APPROPRIATE AGENCY SHALL
10 IMMEDIATELY SUSPEND THE EMPLOYER'S LICENSE.

11 3. ON CONVICTION, THE COURT SHALL ORDER THE EMPLOYER TO PAY AN
12 ADDITIONAL ASSESSMENT. THE ADDITIONAL ASSESSMENT IS FOUR THOUSAND DOLLARS
13 FOR EACH EMPLOYEE FOR WHICH THE EMPLOYER KNOWINGLY FAILED TO COMPLY WITH THIS
14 SECTION. THE COURT SHALL TRANSMIT FIFTY PER CENT OF THE MONIES COLLECTED
15 PURSUANT TO THIS PARAGRAPH TO THE STATE TREASURER AND THE STATE TREASURER
16 SHALL DEPOSIT THE MONIES IN THE STATE GENERAL FUND. THE COURT SHALL TRANSMIT
17 THE REMAINING FIFTY PER CENT OF THE MONIES COLLECTED PURSUANT TO THIS
18 PARAGRAPH TO EITHER:

19 (a) IF THE ATTORNEY GENERAL WAS THE FIRST ENFORCEMENT AGENCY THAT
20 INITIATED THE FIRST INVESTIGATION THAT BROUGHT FORTH THE ACTION UNDER THIS
21 SUBSECTION, THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

22 (b) IF THE COUNTY ATTORNEY WAS THE FIRST ENFORCEMENT AGENCY THAT
23 INITIATED THE FIRST INVESTIGATION THAT BROUGHT FORTH THE ACTION UNDER THIS
24 SUBSECTION, THE COUNTY TREASURER FOR DEPOSIT IN THE COUNTY GENERAL FUND.

25 (c) IF THE CITY OR TOWN ATTORNEY WAS THE FIRST ENFORCEMENT AGENCY THAT
26 INITIATED THE FIRST INVESTIGATION THAT BROUGHT FORTH THE ACTION UNDER THIS
27 SUBSECTION, THE CITY OR TOWN TREASURER FOR DEPOSIT IN THE CITY OR TOWN
28 GENERAL FUND.

29 4. ON CONVICTION, THE COURT SHALL ORDER THE EMPLOYER TO PAY AN AMOUNT
30 THAT IS EQUAL TO TWO TIMES THE AMOUNT OF REVENUE, INCLUDING INTEREST, THAT
31 WAS LOST TO THIS STATE BECAUSE OF THE VIOLATION OF THIS SECTION. THE COURT
32 SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS PARAGRAPH TO THE STATE
33 TREASURER AND THE STATE TREASURER SHALL DEPOSIT THE MONIES IN THE STATE
34 GENERAL FUND.

35 F. THE FOLLOWING APPLY FOR A THIRD VIOLATION BY AN EMPLOYER WHO
36 KNOWINGLY FAILS TO COMPLY WITH SUBSECTION A OF THIS SECTION DURING A ONE YEAR
37 PERIOD:

38 1. A THIRD VIOLATION IS A CLASS 1 MISDEMEANOR AND THE COURT SHALL
39 SENTENCE THE EMPLOYER TO SERVE THE MAXIMUM SENTENCE AUTHORIZED BY LAW.

40 2. ON CONVICTION, THE COURT MAY ORDER THAT THE EMPLOYER'S LICENSE BE
41 SUSPENDED OR REVOKED. IF THE COURT SUSPENDS OR REVOKES A LICENSE PURSUANT TO
42 THIS SUBSECTION, THE COURT SHALL NOTIFY THE APPROPRIATE AGENCY AND THE
43 APPROPRIATE AGENCY SHALL IMMEDIATELY SUSPEND OR REVOKE THE EMPLOYER'S
44 LICENSE.

1 3. ON CONVICTION, THE COURT SHALL ORDER THE EMPLOYER TO PAY AN
2 ADDITIONAL ASSESSMENT. THE ADDITIONAL ASSESSMENT IS SIX THOUSAND DOLLARS FOR
3 EACH EMPLOYEE FOR WHICH THE EMPLOYER KNOWINGLY FAILED TO COMPLY WITH THIS
4 SECTION. THE COURT SHALL TRANSMIT FIFTY PER CENT OF THE MONIES COLLECTED
5 PURSUANT TO THIS PARAGRAPH TO THE STATE TREASURER AND THE STATE TREASURER
6 SHALL DEPOSIT THE MONIES COLLECTED IN THE STATE GENERAL FUND. THE COURT
7 SHALL TRANSMIT THE REMAINING FIFTY PER CENT OF THE MONIES COLLECTED PURSUANT
8 TO THIS PARAGRAPH TO EITHER:

9 (a) IF THE ATTORNEY GENERAL WAS THE FIRST ENFORCEMENT AGENCY THAT
10 INITIATED THE FIRST INVESTIGATION THAT BROUGHT FORTH THE ACTION UNDER THIS
11 SUBSECTION, THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

12 (b) IF THE COUNTY ATTORNEY WAS THE FIRST ENFORCEMENT AGENCY THAT
13 INITIATED THE FIRST INVESTIGATION THAT BROUGHT FORTH THE ACTION UNDER THIS
14 SUBSECTION, THE COUNTY TREASURER FOR DEPOSIT IN THE COUNTY GENERAL FUND.

15 (c) IF THE CITY OR TOWN ATTORNEY WAS THE FIRST ENFORCEMENT AGENCY THAT
16 INITIATED THE FIRST INVESTIGATION THAT BROUGHT FORTH THE ACTION UNDER THIS
17 SUBSECTION, THE CITY OR TOWN TREASURER FOR DEPOSIT IN THE CITY OR TOWN
18 GENERAL FUND.

19 4. ON CONVICTION, THE COURT SHALL ORDER THE EMPLOYER TO PAY AN AMOUNT
20 THAT IS EQUAL TO THREE TIMES THE AMOUNT OF REVENUE, INCLUDING INTEREST, THAT
21 WAS LOST TO THIS STATE BECAUSE OF THE VIOLATION OF THIS SECTION. THE COURT
22 SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS PARAGRAPH TO THE STATE
23 TREASURER AND THE STATE TREASURER SHALL DEPOSIT THE MONIES IN THE STATE
24 GENERAL FUND.

25 5. THE ENFORCEMENT AGENCY SHALL RECORD THE JUDGMENT OF THE COURT AS A
26 LIEN AGAINST THE EMPLOYER.

27 G. LAW ENFORCEMENT AUTHORITIES SHALL NOT PROVIDE ANY INCENTIVES TO LAW
28 ENFORCEMENT OFFICERS FOR INVESTIGATING ALLEGED VIOLATIONS OF THIS SECTION.

29 H. THE PENALTIES UNDER THIS SECTION ARE IN ADDITION TO ANY OTHER
30 PENALTIES THAT MAY BE IMPOSED BY LAW.

31 I. FOR THE PURPOSES OF THIS SECTION:

32 1. "EMPLOYER" MEANS ANY PERSON WHO OWNS A PERCENTAGE OF THE BUSINESS
33 ENTITY. EMPLOYER DOES NOT INCLUDE SHAREHOLDERS OF COMPANIES WHO HAVE A CLASS
34 OF COMMON EQUITY STOCK LISTED OR AUTHORIZED TO BE LISTED ON THE NEW YORK
35 STOCK EXCHANGE OR THE AMERICAN STOCK EXCHANGE OR LISTED ON THE NASDAQ STOCK
36 MARKET.

37 2. "ENFORCEMENT AGENCY" MEANS THE ATTORNEY GENERAL OR A COUNTY, CITY
38 OR TOWN ATTORNEY.

39 3. "LICENSE" MEANS THE WHOLE OR A PART OF ANY AGENCY PERMIT,
40 CERTIFICATE, APPROVAL, REGISTRATION, CHARTER OR SIMILAR FORM OF PERMISSION
41 THAT IS REQUIRED BY LAW FOR THE PURPOSES OF OPERATING A BUSINESS IN THIS
42 STATE.

1 Sec. 4. Section 41-763, Arizona Revised Statutes, is amended to read:
2 41-763. Powers and duties of the director relating to personnel

3 The director shall:

4 1. Appoint employees necessary to perform the duties prescribed by
5 this article.

6 2. Have authority for developing and administering a program of
7 personnel administration for the state service in conformance with the
8 personnel rules.

9 3. Have authority to establish such offices as may be necessary to
10 maintain an effective and economical program of personnel administration.

11 4. Have the power to deputize employees in various state agencies
12 where certain of the functions of personnel administration can be performed
13 by such deputies.

14 5. Make an annual report and recommendation to the legislature and the
15 joint legislative budget committee as provided in section 41-763.01.

16 6. Adopt rules relating to personnel and personnel administration.

17 7. Subject to legislative appropriation, have the authority to
18 contract for the services of consultants necessary to perform the annual
19 salary plan and salary plan adjustment recommendations.

20 8. Establish a mandatory program of annual personnel management
21 training for all state employees with supervisory or managerial
22 responsibility that is appropriate to the nature and scope of the employees'
23 supervisorial responsibilities. The director may waive the annual mandatory
24 training on a case by case basis. The training shall include at least the
25 following subjects:

26 (a) Basic employee supervisory or managerial skills.

27 (b) Establishing employee objectives and performance measures.

28 (c) Measuring employee performance and the use of performance
29 evaluation methods.

30 (d) Employee discipline training and discipline procedures.

31 (e) Other subjects as determined by the director.

32 9. VERIFY THE AUTHORIZATION FOR EMPLOYMENT IN THE UNITED STATES OF
33 EVERY STATE EMPLOYEE THROUGH THE BASIC EMPLOYMENT VERIFICATION PILOT PROGRAM
34 AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY
35 AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

36 Sec. 5. Title 41, chapter 6, Arizona Revised Statutes, is amended by
37 adding article 7.2, to read:

38 ARTICLE 7.2. LICENSING ELIGIBILITY AND AUDITS

39 41-1080. Definitions

40 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

41 1. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT
42 PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND
43 SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

1 2. NOTIFY THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OF THE
2 UNAUTHORIZED WORKER.

3 C. FOR THE PURPOSES OF SUBSECTION A, PROOF OF THE FOLLOWING
4 CIRCUMSTANCES, UNLESS SATISFACTORILY EXPLAINED, MAY GIVE RISE TO THE
5 INFERENCE THAT AN EMPLOYER KNOWINGLY EMPLOYED AN UNAUTHORIZED WORKER:

6 1. THE EMPLOYER PAYS THE EMPLOYEE WITH CASH INSTEAD OF BY CHECK OR
7 AUTOMATIC DEPOSIT.

8 2. THE EMPLOYER USES THE SERVICES OF A PERSON WHO IS REASONABLY KNOWN
9 TO BE VIOLATING TITLE 13, CHAPTER 23 OR TO BE ACTING IN CONCERT WITH OTHERS
10 WHO ARE VIOLATING TITLE 13, CHAPTER 23.

11 3. THE EMPLOYER VIOLATES THE MINIMUM WAGE REQUIREMENTS PRESCRIBED BY
12 THE FEDERAL FAIR LABOR STANDARDS ACT.

13 4. THE EMPLOYER ACCEPTS A CONSULAR IDENTIFICATION CARD THAT IS ISSUED
14 BY A FOREIGN GOVERNMENT AS A FORM OF IDENTIFICATION WHEN DETERMINING THE
15 EMPLOYEE'S IDENTITY.

16 D. THE ATTORNEY GENERAL MAY ASSESS A CIVIL PENALTY OF FIVE THOUSAND
17 DOLLARS AGAINST ANY PERSON WHO FAILS TO COMPLY WITH A CEASE AND DESIST ORDER
18 WITHIN THE TEN BUSINESS DAYS PURSUANT TO SUBSECTION B, PARAGRAPH 1.

19 41-1080.03. Employment of unauthorized workers; failure to
20 comply with cease and desist order; civil cause
21 of action

22 IF A PERSON FAILS TO COMPLY WITH THE CEASE AND DESIST ORDER UNDER
23 SECTION 41-1080.02, THE AGENCY OR THE ATTORNEY GENERAL MAY BRING A CIVIL
24 CAUSE OF ACTION TO HAVE THE PERSON'S LICENSE SUSPENDED OR REVOKED. THE COURT
25 SHALL SUSPEND OR REVOKE THE PERSON'S LICENSE BASED ON THE SEVERITY OF THE
26 OFFENSE.

27 Sec. 6. Section 41-1376, Arizona Revised Statutes, is amended to read:
28 41-1376. Powers and duties

29 A. The ombudsman-citizens aide shall:

30 1. Investigate the administrative acts of agencies pursuant to section
31 41-1377, subsections A and B except as provided in section 41-1377,
32 subsections C, D and E. The ombudsman-citizens aide shall investigate the
33 administrative acts of an agency without regard to the finality of the
34 administrative act.

35 2. Annually before January 1 prepare a written report to the governor,
36 the legislature and the public that contains a summary of the
37 ombudsman-citizens aide's activities during the previous fiscal year. The
38 ombudsman-citizens aide shall semiannually present this report before the
39 legislative council. This report shall include:

40 (a) The ombudsman-citizens aide's mission statement.

41 (b) The number of matters that were within each of the categories
42 specified in section 41-1379, subsection B.

1 (c) Legislative issues affecting the ombudsman-citizens aide.

2 (d) Selected case studies that illustrate the ombudsman-citizens
3 aide's work and reasons for complaints.

4 (e) Ombudsman-citizens aide's contact statistics.

5 (f) Ombudsman-citizens aide's staff.

6 3. Before conducting the first investigation, adopt rules that ensure
7 that confidential information that is gathered will not be disclosed.

8 4. Appoint a deputy ombudsman and prescribe the duties of employees
9 or, subject to appropriation, contract for the services of independent
10 contractors necessary to administer the duties of the office of
11 ombudsman-citizens aide. All staff serves at the pleasure of the
12 ombudsman-citizens aide, and they are exempt from chapter 4, articles 5 and 6
13 of this title. All staff shall be subject to the conflict of interest
14 provisions of title 38, chapter 3, article 8.

15 5. Before conducting the first investigation, adopt rules that
16 establish procedures for receiving and processing complaints, including
17 guidelines to ensure each complainant has exhausted all reasonable
18 alternatives within the agency, conducting investigations, incorporating
19 agency responses into recommendations and reporting findings.

20 6. Notify the chief executive or administrative officer of the agency
21 in writing of the intention to investigate unless notification would unduly
22 hinder the investigation or make the investigation ineffectual.

23 7. Appoint an assistant to help the ombudsman-citizens aide
24 investigate complaints relating to child protective services in the
25 department of economic security. The assistant shall have expertise in child
26 protective services procedures and laws. Notwithstanding any law to the
27 contrary, the ombudsman-citizens aide and the assistant have access to child
28 protective services records and to any automated case management system used
29 by child protective services in the department of economic security.

30 8. APPOINT AN IMMIGRATION OMBUDSMAN-CITIZENS AIDE WHO SHALL RECEIVE
31 COMPLAINTS AND PROVIDE IMMIGRATION INFORMATION TO EMPLOYERS PURSUANT TO
32 SECTION 41-1384. THE IMMIGRATION OMBUDSMAN-CITIZENS AIDE SERVES AT THE
33 PLEASURE OF THE OMBUDSMAN-CITIZENS AIDE.

34 B. After the conclusion of an investigation and notice to the head of
35 the agency pursuant to section 41-1379, the ombudsman-citizens aide may
36 present the ombudsman-citizens aide's opinion and recommendations to the
37 governor, the legislature, the office of the appropriate prosecutor or the
38 public, or any combination of these persons. The ombudsman-citizens aide
39 shall include in the opinion the reply of the agency, including those issues
40 that were resolved as a result of the ombudsman-citizens aide's preliminary
41 opinion or recommendation.

1 Sec. 7. Title 41, chapter 8, article 5, Arizona Revised Statutes, is
2 amended by adding section 41-1384, to read:

3 41-1384. Immigration ombudsman-citizens aide; assistance with
4 federal immigration laws and employee verification;
5 definitions

6 A. ON RECEIVING A COMPLAINT THAT AN EMPLOYER IN THIS STATE EMPLOYS AN
7 IDENTIFIABLE UNAUTHORIZED WORKER, THE IMMIGRATION OMBUDSMAN-CITIZENS AIDE
8 SHALL FORWARD THE INFORMATION CONTAINED IN THE COMPLAINT TO THE ATTORNEY
9 GENERAL.

10 B. THE IMMIGRATION OMBUDSMAN-CITIZENS AIDE SHALL PROVIDE EMPLOYERS
11 WITH INFORMATION THAT HELPS EMPLOYERS TO PROPERLY COMPLY WITH FEDERAL
12 IMMIGRATION LAWS. THE IMMIGRATION OMBUDSMAN-CITIZENS AIDE SHALL PROVIDE
13 ASSISTANCE TO EMPLOYERS TO ENROLL IN AND USE THE BASIC PILOT PROGRAM.

14 C. FOR THE PURPOSES OF THIS SECTION:

15 1. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT
16 PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND
17 SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

18 2. "UNAUTHORIZED WORKER" MEANS A PERSON WHO IS ALL OF THE FOLLOWING:

19 (a) A PERSON WHO IS NOT A CITIZEN OR NATIONAL OF THE UNITED STATES.

20 (b) AN ALIEN WHO IS NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.

21 (c) AN ALIEN WHO IS NOT AUTHORIZED TO BE EMPLOYED UNDER FEDERAL LAW.

22 Sec. 8. Section 43-1021, Arizona Revised Statutes, as amended by Laws
23 2005, chapter 316, section 3 and chapter 317, section 11, is amended to read:

24 43-1021. Additions to Arizona gross income

25 In computing Arizona adjusted gross income, the following amounts shall
26 be added to Arizona gross income:

27 1. A beneficiary's share of the fiduciary adjustment to the extent
28 that the amount determined by section 43-1333 increases the beneficiary's
29 Arizona gross income.

30 2. An amount equal to the "ordinary income portion" of a lump sum
31 distribution that was excluded from federal adjusted gross income pursuant to
32 section 402(d) of the internal revenue code.

33 3. The amount of interest income received on obligations of any state,
34 territory or possession of the United States, or any political subdivision
35 thereof, located outside the state of Arizona, reduced, for tax years
36 beginning from and after December 31, 1996, by the amount of any interest on
37 indebtedness and other related expenses that were incurred or continued to
38 purchase or carry those obligations and that are not otherwise deducted or
39 subtracted in arriving at Arizona gross income.

40 4. Annuity income received during the taxable year to the extent that
41 the sum of the proceeds received from such annuity in all taxable years prior
42 to and including the current taxable year exceeds the total consideration and
43 premiums paid by the taxpayer. This paragraph applies only to those
44 annuities with respect to which the first payment was received prior to
45 December 31, 1978.

1 5. The excess of a partner's share of partnership taxable income
2 required to be included under chapter 14, article 2 of this title over the
3 income required to be reported under section 702(a)(8) of the internal
4 revenue code.

5 6. The excess of a partner's share of partnership losses determined
6 pursuant to section 702(a)(8) of the internal revenue code over the losses
7 allowable under chapter 14, article 2 of this title.

8 7. The amount by which the adjusted basis of property described in
9 this paragraph and computed pursuant to the internal revenue code exceeds the
10 adjusted basis of such property computed pursuant to this title and the
11 income tax act of 1954, as amended. This paragraph shall apply to all
12 property which is held for the production of income and which is sold or
13 otherwise disposed of during the taxable year, except depreciable property
14 used in a trade or business.

15 8. The amount of depreciation or amortization of costs of any capital
16 investment that is deducted pursuant to section 167 or 179 of the internal
17 revenue code by a qualified defense contractor with respect to which an
18 election is made to amortize pursuant to section 43-1024.

19 9. The amount of gain from the sale or other disposition of a capital
20 investment which a qualified defense contractor has elected to amortize
21 pursuant to section 43-1024.

22 10. Amounts withdrawn from the Arizona state retirement system, the
23 corrections officer retirement plan, the public safety personnel retirement
24 system, the elected officials' retirement plan or a county or city retirement
25 plan by an employee upon termination of employment before retirement to the
26 extent they were deducted in arriving at Arizona taxable income in any year.

27 11. That portion of the net operating loss included in federal adjusted
28 gross income which has already been taken as a net operating loss for Arizona
29 purposes or which is separately taken as a subtraction under the special net
30 operating loss transition rule.

31 12. Any nonitemized amount deducted pursuant to section 170 of the
32 internal revenue code representing contributions to an educational
33 institution which denies admission, enrollment or board and room
34 accommodations on the basis of race, color or ethnic background except those
35 institutions primarily established for the education of American Indians.

36 13. The amount paid as taxes on property in this state with respect to
37 which a credit is claimed under section 43-1078.

38 14. Amounts withdrawn from a medical savings account by the individual
39 during the taxable year computed pursuant to section 220(f) of the internal
40 revenue code and not included in federal adjusted gross income.

41 15. Any amount of agricultural water conservation expenses that were
42 deducted pursuant to the internal revenue code for which a credit is claimed
43 under section 43-1084.

44 16. The amount by which the depreciation or amortization computed under
45 the internal revenue code with respect to property for which a credit was

1 taken under section 43-1080 exceeds the amount of depreciation or
2 amortization computed pursuant to the internal revenue code on the Arizona
3 adjusted basis of the property.

4 17. The amount by which the adjusted basis computed under the internal
5 revenue code with respect to property for which a credit was claimed under
6 section 43-1080 and which is sold or otherwise disposed of during the taxable
7 year exceeds the adjusted basis of the property computed under section
8 43-1080.

9 18. The amount by which the depreciation or amortization computed under
10 the internal revenue code with respect to property for which a credit was
11 taken under either section 43-1081 or 43-1081.01 exceeds the amount of
12 depreciation or amortization computed pursuant to the internal revenue code
13 on the Arizona adjusted basis of the property.

14 19. The amount by which the adjusted basis computed under the internal
15 revenue code with respect to property for which a credit was claimed under
16 section 43-1074.02, 43-1081 or 43-1081.01 and which is sold or otherwise
17 disposed of during the taxable year exceeds the adjusted basis of the
18 property computed under section 43-1074.02, 43-1081 or 43-1081.01, as
19 applicable.

20 20. The deduction referred to in section 1341(a)(4) of the internal
21 revenue code for restoration of a substantial amount held under a claim of
22 right.

23 21. The amount by which a net operating loss carryover or capital loss
24 carryover allowable pursuant to section 1341(b)(5) of the internal revenue
25 code exceeds the net operating loss carryover or capital loss carryover
26 allowable pursuant to section 43-1029, subsection F.

27 22. Any amount deducted pursuant to section 170 of the internal revenue
28 code representing contributions to a school tuition organization or a public
29 school for which a credit is claimed under section 43-1089 or 43-1089.01.

30 23. Any amount deducted in computing Arizona gross income as expenses
31 for installing solar stub outs or electric vehicle recharge outlets in this
32 state with respect to which a credit is claimed pursuant to section 43-1090.

33 24. Any wage expenses deducted pursuant to the internal revenue code
34 for which a credit is claimed under section 43-1087 and representing net
35 increases in qualified employment positions for employment of temporary
36 assistance for needy families recipients.

37 25. Any amount deducted for conveying ownership or development rights
38 of property to an agricultural preservation district under section 48-5702
39 for which a credit is claimed under section 43-1081.02.

40 26. The amount of any depreciation allowance allowed pursuant to
41 section 167(a) of the internal revenue code to the extent not previously
42 added.

43 27. With respect to property for which an expense deduction was taken
44 pursuant to section 179 of the internal revenue code, the amount in excess of
45 twenty-five thousand dollars.

1 28. The amount of any deductions that are claimed in computing federal
2 adjusted gross income representing expenses for which a credit is claimed
3 under section 43-1075.

4 29. THE AMOUNT BY WHICH THE DEPRECIATION OR AMORTIZATION COMPUTED UNDER
5 THE INTERNAL REVENUE CODE WITH RESPECT TO PROPERTY FOR WHICH A CREDIT WAS
6 TAKEN UNDER SECTION 43-1090.01 EXCEEDS THE AMOUNT OF DEPRECIATION OR
7 AMORTIZATION COMPUTED PURSUANT TO THE INTERNAL REVENUE CODE ON THE ARIZONA
8 ADJUSTED BASIS OF THE PROPERTY.

9 30. THE AMOUNT BY WHICH THE ADJUSTED BASIS COMPUTED UNDER THE INTERNAL
10 REVENUE CODE WITH RESPECT TO PROPERTY FOR WHICH A CREDIT WAS CLAIMED UNDER
11 SECTION 43-1090.01 AND WHICH IS SOLD OR OTHERWISE DISPOSED OF DURING THE
12 TAXABLE YEAR EXCEEDS THE ADJUSTED BASIS OF THE PROPERTY COMPUTED UNDER
13 SECTION 43-1090.01.

14 31. THE AMOUNT OF SALARY OR OTHER COMPENSATION THAT IS PAID TO AN
15 UNAUTHORIZED WORKER AND THAT IS DEDUCTED AS A BUSINESS EXPENSE UNDER SECTION
16 162 OF THE INTERNAL REVENUE CODE. FOR THE PURPOSES OF THIS PARAGRAPH,
17 "UNAUTHORIZED WORKER" MEANS A PERSON WHO IS ALL OF THE FOLLOWING:

18 (a) A PERSON WHO IS NOT A CITIZEN OR NATIONAL OF THE UNITED STATES.

19 (b) AN ALIEN WHO IS NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.

20 (c) AN ALIEN WHO IS NOT AUTHORIZED TO BE EMPLOYED UNDER FEDERAL LAW.

21 Sec. 9. Repeal

22 Section 43-1021, Arizona Revised Statutes, as amended by Laws 2005,
23 chapter 292, section 2, is repealed.

24 Sec. 10. Appropriation; immigration ombudsman-citizens aide;
25 exemption

26 A. The sum of \$100,000 and 1 FTE position is appropriated from the
27 state general fund in fiscal year 2006-2007 to the ombudsman-citizens aide
28 for the purpose of the immigration ombudsman-citizens aide pursuant to
29 section 41-1384, Arizona Revised Statutes, as added by this act.

30 B. The appropriation made in subsection A of this section is exempt
31 from the provisions of section 35-190, Arizona Revised Statutes, relating to
32 lapsing of appropriations.

33 Sec. 11. Severability; construction

34 A. If any provision of this act or its application to any person or
35 circumstance is held invalid, the invalidity does not affect other provisions
36 or applications of this act that can be given effect without the invalid
37 provision or application, and to this end the provisions of this act are
38 severable.

39 B. All provisions in this act that are relevant to immigration or the
40 classification of aliens shall be construed to be in conformity with federal
41 immigration law.

42 Sec. 12. Short title

43 This act shall be known as and may be cited as the "Fair and Legal
44 Employment Act."